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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW.
Room TW-A325
Washington, DC 20554

Re: Proposed Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges

Dear Secretary Dortch:

I have been using a mobile phone for less than 10 years, so I could be considered a late-adopter. Yet in that time, I have been able to enjoy the convenience of mobile phone use in some unconventional ways, such as downloading coupons, playing games online, and other paid and free subscription services. However, I also have had the experience of having “mystery” charges appear on my wireless bill for services I did not use nor did I knowingly authorize – in other words, I was crammed. Thus, while I am aware of the pleasure and convenience many of these third-party services offer, I have first-person experience with the shock of fraudulent charges and the hassle of having them removed. I am grateful for the opportunity to comment on the proposed rules regulating third-party charges on wireless bills.

Of course, at the April 27, 2012, meeting of the FCC, the commission adopted rules regulating third-party charges on landline telephone bills. Those rules place two important obligations on landline telephone providers: first, if such service is offered, they must give customers notice that they can choose to block all third-party charges from their landline bills; and second, any third-party charges that do appear on bills must be clearly identifiable on a discrete part of the bill with a total charge separate from the phone bill total.¹

Anticipating the commission’s action in this matter, Verizon and AT&T, two of the largest wireless phone service providers in the United States, took voluntary steps to limit third-party charges on their customer’s landline bills. According to statements by Verizon and AT&T, with the exception of “telecommunication-related services, like long-distance, conference calling services and directory assistance,” the companies plan to largely halt the practice of third-party billing.² While these voluntary measures were clearly prompted by the impending action by the commission, the steps clearly go beyond the protections offered under the new FCC rules.

It is clear that this action by the FCC was undertaken in response to significant harm that consumer’s have suffered by crammed charges on their telephone bills. A Senate Commerce

¹ Telecommunications Reports. “FCC Leaves Wireless Services Out of New ‘Cramming’ Rules.” 78:10, 2012, p. 5.

² Telecommunications Reports. “AT&T, Verizon to Stop Allowing Third-Party Charges.” 78:8, 2012, p. 24.

Committee report found that while there are approximately 300 million third-party charges on phone bills each year, only 5 percent of consumers are aware that they are being charged.³ Whether the lack of awareness is the result of consumers not checking their bills or evolving auto-pay methods, the fact remains that there is a high risk that many unauthorized charges are being paid each month.

Even where a consumer does notice the unauthorized charges, it can be quite a hassle to get the charges removed and any prior payments refunded. In my case, my service provider's initial reaction to my complaint was to blame me for signing up for the subscription service. I was then told to contact the third party. However, my opinion of that course of action was similar to that of the Consumer Program Director of the U.S. Public Interest Research Group: "How do you complain to a scammer?"⁴ I pressed my provider's representative and was eventually given a refund for current and prior charges.

While real problems do exist, it also appears likely that some enthusiastic consumer advocates in the media have overhyped the problem on occasion. For example, a consumer affairs columnist in the *New York Times* recently mischaracterized the Senate Commerce Committee's report on its cramming investigation "put[ing] the amount of that [landline] cramming at \$2 billion a year."⁵ What the report actually found was that there is "\$2 billion worth of third-party charges on telephone bills every year" and that a "substantial portion" of those charges resulted from cramming.⁶ The columnist made the mistake of believing all third-party charges are fraudulent.

To the contrary, there are many services that may be considered a third-party charge on a phone bill – particularly for wireless phones – that consumers find convenient and enjoyable. Legitimate third-party charges may appear on wireless phone bills are for services that range very serious to frivolous: donations to relief organizations (especially in the aftermath of disasters), premium business or news content delivered to handset, custom ring tones, and online gaming.

One danger in applying the same regulations landline telephone services to wireless services is to put barriers between consumers and these conveniences. One such convenience is streamlining the billing process. If legitimate, adding third-party charges to phone bills means consumers have less paper to deal with and fewer separate bills that need to be paid. This appears to be consistent with the growing desire by consumers to consolidate their financial obligations.

Another benefit of third-party billing is that it allows service providers to charge less by reducing overhead costs of collections. Many third parties cannot offer their services for more than a few dollars because consumers simply will not pay more. These companies would find it more efficient to pay the wireless provider a fee for doing the billing and collections. If the wireless provider has to hire extra staff members to deal with blocking and unblocking third-party charges accounts, they will have to raise the transaction fee they charge providers or limit the number of

³ Temple, James. "Time to get serious about 'mystery fees' on phone bills." *San Francisco Chronicle*. July 20, 2011, p. D1.

⁴ Mierzewski, Edmund. "Colston E. Warne Lecture: Consumer Protection 2.0—Protecting Consumers in the 21st Century." *The Journal of Consumer Affairs*, 44:3, 2010. p. 589.

⁵ Segal, David, "To Stop Cramming, Don't Let It Start." *The New York Times*. April 8, 2012. p. BU 5.

⁶ U.S. Senate. Committee on Commerce, Science, and Transportation. "Report to the Senate on Unauthorized Charges on Telephone Bills." July 12, 2011. http://commerce.senate.gov/public/?a=Files.Serve&File_id=3295866e-d4ba-4297-bd26-571665f40756 (accessed June 22, 2012).

parties with whom they do business. This could have a devastating effect on small service providers in this tough economy.

Finally, in a time when the security of using credit and debit cards and checking accounts is increasingly suspect, third-party billing using a cellular phone may provide greater security for both seller and purchaser. One only needs an account number to make a fraudulent charge on a bank or credit account; however, to place a charge using a cellular phone, you need to have physical access to the actual phone in order to approve of a charge. This makes it more likely that the charge is being approved by the actual holder of the phone account. If the commission were to make it more difficult to make purchases using their cell phones, then consumers would either have to go online to fill out forms and enter credit card information or they would avoid making those purchases.

Another danger is the potential interference with the development of industry standards in a fast-changing industry. Cellular phones as mass communication devices represent a relatively young technological medium. The evolution of features and the exponential increase in processing power have proceeded at a staggering pace. Overaggressive regulation of use of cell phones for payment purposes could have an unintended ossifying effect on technological development. The popularity of cell phone use testifies to user satisfaction. It could be that the mobile phone will eventually take the place of many of the things we carry in our wallets and purses.

Indeed, there is broad agreement between the mobile phone industry and regulators that there are fewer complaints about third-party charges on wireless bills than there have been on landline bills. In the notice of proposed rulemaking now in question, the commission admits that “[c]ramming appears to be less a problem for [wireless] consumers than for wireline consumers.”⁷ This statement reveals that there is a substantial difference in expectation between wireless and landline consumers. It also points to the fact that, while not perfect, wireless providers do have effective safeguards already in place.

Officials in the wireless phone industry claim that wireless phone users have the opportunity to manage their accounts and to approve of any third-party charges. According to a spokesman for Verizon

The process for applying charges for third-party services to wireless bills... is fundamentally different from wireline third-party billing. In accordance with industry best practices, consumers are directly involved in the opt in process for third party services in the wireless context, and Verizon requires opt in from consumers at the time of purchase or sign up. Verizon also offers options to manage and block charges for third-party services.⁸

Since wireless customers have the ability to send and receive text messages and to use their phone to pay their bills – not to mention access the Internet using a smartphone – they have the capacity to be more aware of their services and any change in them than landline users.

In addition, the Mobile Marketing Association’s Consumer Protection Standards provide standard protocols for wireless providers to implement to help reduce unapproved third-party charges. These third-party billing standards include: 1) the vendor’s name written clearly on the bill; 2) a “plain language

⁷ “Notice of Proposed Rulemaking, Empowering Consumers To Prevent and Detect Billing for Unauthorized Charges (Cramming): Consumer Information and Disclosure; Truth-in-Billing Format.” Fed. Reg. 77:101, May 24, 2012, p. 30974.

⁸ Telecommunications Reports. “Schumer Asks FCC, Carriers To Address ‘Cramming’.” 78:8, April 15, 2012, p. 16.

description” of the services provided in exchange for the charge; 3) a “double opt in message” in the case of premium services to confirm that the customer approves; 4) the ability for the customer to opt out of the service by sending the third party a short text message.⁹

Consumers also wield more power with mobile phone providers than they do with landline providers. There is more competition in the mobile phone service market. Consumers not only have more options but also greater ability to move from one provider to another. Even if a consumer is under contract with one provider, competitors are often willing to buy out that contract to entice the customer to switch. Thus, consumers have greater leverage to demand superior customer service as well as prompt resolution of complaints about unauthorized third-party charges.

Rather than stretching the landline regulations to cover wireless providers, the commission should carefully observe the effectiveness of the mobile industry standards over a period of time. If an increasing number of consumers have fraudulent charges on their mobile bills, then the commission should make it clear to industry leaders that it is ready and willing to regulate in this area. The commission has already shown that it will take action to protect consumers. The rules approved for regulating third-party charges on landline bills has prompted industry leaders to voluntarily reassess their practices.

However, it is also important to recognize that wireless service providers do have an interest in eliminating unauthorized charges. The fees they receive from placing third-party charges on their bills are small compared with the potential loss of customers who resent being crammed by third parties. The commission can and should work with the mobile phone industry to develop technologies to make it easier for customers to manage their accounts. Any wireless phone service who offers online bill-pay or a mobile application for managing accounts should make it simple for consumers to see third-party charges on their accounts and to challenge any they consider illegitimate. This would allow consumers to select the charge and a reason for contesting it. This information would go to the third party which could choose to withdraw the charge or seek another means of collecting the bill.

I suspect that there is wide agreement that mobile phone carriers provide a service that is becoming ever more integral to how we live and work. Consumers can use their mobile phones to interact with each other in exciting new ways. Fraudulent businesses who take advantage of consumers need to be punished and so do phone carriers who enable them. This can be done through assessing fines and bringing class action lawsuits. However, it is important that we not overregulate this dynamic and thriving industry which has the opportunity to develop new ways to empower consumers to manage their accounts.

Sincerely,

Jason Curriden

⁹ Telecommunications Reports. “Schumer Asks FCC, Carriers To Address ‘Cramming’.” 78:8, April 15, 2012, p. 16.